

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

Rosina Fieno,

Complainant,

v.

Lakewood Community College,

Respondent.

PREHEARING ORDER

On May 4, 1995, a prehearing conference in this proceeding was held at the Office of Administrative Hearings. Michelle M. Lore, Horton & Associates, Attorneys at Law, 700 Title Insurance Building, 400 2nd Avenue South, Minneapolis, Minnesota 55401-2402, appeared on behalf of Complainant. Sharon Lewis, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2128, appeared on behalf of Respondent. At the time of the prehearing conference, the parties were given additional time to submit written comments on discovery procedures. More specifically, the parties were authorized to address the propriety of staying discovering until the Department of Human Rights considers Complainant's pending retaliation charge or until the Respondent requests that the retaliation charge be referred to the Office of Administrative Hearings. Both parties submitted written comments. The last written comment was received on May 22, 1995.

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED:

1. Discovery in this proceeding may commence immediately.
2. Discovery is not limited to the sex discrimination charge in this case but may also cover the circumstances surrounding the retaliation charge.
3. If the Department of Human Rights does not make a determination on Complainant's retaliation charge within the 180-day period set forth in the Human Rights Act, Complainant shall request that the Commissioner refer that charge to the Office of Administrative Hearings under Minn. Stat. § 363.071, subd. 1a (1994). Upon referral, the retaliation charge shall be consolidated into this proceeding.
4. A telephone prehearing conference will be held at 9:30 a.m. on September 8, 1995, to consider the status of discovery, schedule procedures for any dispositive motions the parties intend to file, and to schedule a tentative hearing date.

Dated this 24th of May, 1995

---

JON L. LUNDE  
Administrative Law Judge

MEMORANDUM

This case involves charges of sex discrimination brought by Complainant against Respondent. The Department did not make a probable cause determination on Complainant's charge within the 180-day period set forth in Minn. Stat. § 363.071, subd. 1a. Consequently, Complainant requested that the Commissioner refer that charge to the Office of Administrative Hearings under the statute. Complainant has also filed a separate retaliation charge against the Respondent. That charge is pending before the Commissioner of the Minnesota Department of Human Rights. At the prehearing conference, Respondent argued that no discovery in this proceeding should take place until the Department rules on the Complainant's pending retaliation charge. Also, if discovery is allowed to begin, Respondent argued that discovery should be limited to the issues involved in this proceeding and should not include discovery relating to the retaliation charge. Both arguments are unpersuasive.

There is no good reason to delay discovery relating to the issues involved in this proceeding merely because another, different charge, is pending before the Commissioner of Human Rights. The Complainant's charge has been pending for over six months and further delays should be avoided. Second, it is appropriate to permit the parties to undertake discovery relating to Complainant's retaliation claim. It is likely that the Department will not make a probable cause determination on her retaliation charge within the in the 180-day period set forth in the statute, and Complainant has agreed to request that her retaliation charge be referred to this Office when the 180-day period expires if the Department has not made a probable cause determination at that time. Complainant has also agreed to consolidate that retaliation charge with the issues in this case at that time.

Even if the Department rejects the retaliation charge and it proceeds to district court, permitting full discovery now will make duplicative discovery in the district court unnecessary. Also, assuming that no retaliation charge had been filed by Complainant, the circumstances surrounding it likely may be relevant to the sexual discrimination charges in this case. They might be relevant to show a discriminatory intent or an illegal motive. Under all the circumstances, therefore, discovery relating to the retaliation charge is appropriate.

JLL